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APR 16 2002

In re Application of :
Mitchell A. Benjamin et al :
Application No. 09/981,660 :
Filed: October 17, 2001 :
Attorney Docket No. 44375/16:1 :

**OFFICE OF PETITIONS
ON PETITION**

This is in response to the "Petition to Withdraw Claim of Priority," filed March 26, 2002.

The petition is dismissed as moot.

Petitioner requests that the claim to priority to nonprovisional Application No. 09/837,563 and provisional Application No. 60/198,068 be withdrawn.

Petitioner is advised that withdrawal of a reference to a claim for priority made in the first line following the title of the specification is appropriate by way of an amendment. It is noted that an amendment deleting all reference to prior-filed nonprovisional Application No. 09/837,563 and provisional Application No. 60/198,068 has been submitted concurrently with the instant petition. Accordingly, the submission of a petition to delete a reference to the prior filed applications is unnecessary and is dismissed as involving a moot issue.

Petitioner is advised that, by deleting all reference to the prior filed applications, he cannot later file a petition under 37 CFR 1.78(a)(3) and (a)(6) to accept a claim for priority to the prior-filed applications as unintentional.

It is noted that a petition under 37 CFR 1.48(b) was filed on March 26, 2002 to remove Daniel Preston and R. Pierce Lutter as inventors.

Petitioner's attention is directed to 37 CFR 1.48(f), which states:

If the correct inventor or inventors are not named on filing a nonprovisional application under § 1.53(b) without an executed oath or declaration under § 1.63 by any of the inventors, the first submission of an executed oath during the pendency of the application will act to correct the earlier identification of inventorship. See §§ 1.41(a)(4) * * *.

Accordingly, since the executed declaration filed on March 26, 2002 is the first submission of an executed declaration, that declaration acts to correct the earlier identification of inventorship.

A corrected filing receipt which reflects that this application does not claim priority to any prior-filed applications and which reflects the inventors named in the declaration received March 26, 2002 accompanies this decision on petition.

Any questions concerning this decision may be directed to the undersigned at (703) 305-8680.

This application is being forwarded to the Office of Initial Patent Examination Division for pre-examination processing and for mailing of a Filing Receipt reflecting the projected publication date of the instant application.


Frances Hicks

Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt